In the
Indiana Supreme Court

Joseph E. Corcoran,
Petitioner,

v.

State of Indiana,
Respondent.

Supreme Court Case No.
24S-PD-421

Trial Court Case Nos.
02D04-9707-CF-465
02D04-0502-PC-12

Published Order Denying Motion to Stay Execution

On September 11, 2024, this Court issued an order setting Joseph E. Corcoran's execution date for December 18, 2024, before the hour of sunrise. On November 15, the State Public Defender filed two "Motion[s] for Stay of Execution" and two petitions seeking permission from this Court to litigate on successive post-conviction review: (1) whether his execution would violate the Eighth and Fourteenth Amendments to the United States Constitution or Article 1, Section 16 of the Indiana Constitution; and (2) whether he is competent to be executed under *Panetti v. Quarterman*, 551 U.S. 930 (2007) and *Ford v. Wainwright*, 477 U.S. 399 (1986). After ordering response briefing from the State, we issued an order on December 5 reflecting that a majority of the Court voted to deny Corcoran's requests for relief and that the Court would promptly issue a written opinion explaining its reasoning. On December 10, we issued an opinion, authored by Justice Molter and joined by Justices Massa and Slaughter, explaining why a majority of the Court denied the pending requests. *Corcoran v. State*, --- N.E.3d --- (Ind. Dec. 10, 2024). Along with the majority opinion, we issued a dissenting opinion authored by Justice Goff, which Chief Justice Rush joined. *Corcoran v. State*, --- N.E.3d --- (Ind. Dec. 10, 2024) (Goff, J., dissenting). That opinion explained why the dissenting justices would have granted a stay of execution and either appointed a psychiatrist to render an opinion on Corcoran's current mental state or authorized the filing of a successive petition for post-conviction relief to litigate Corcoran's competency to be executed. *Id.*

Those opinions related to the State Public Defender's request to pursue **successive** petitions for post-conviction relief. But parallel to those proceedings, the State Public Defender also seeks to relitigate the **original** post-conviction relief proceedings, and that is the matter before us now. On October 28, 2024, the State Public Defender sought different relief under Trial Rule 60(B)(8) in the post-conviction court requesting that the court vacate two orders: (1) its September 20, 2003 order striking Corcoran's unsigned petition for post-conviction relief; and (2) its June 9, 2005 order dismissing his signed petition for post-conviction relief as untimely. The State Public Defender argued that this Court's opinion in *Isom v. State*, 170 N.E.3d 623

(Ind. 2021), *reh'g denied*—which allowed a capital post-conviction petitioner to proceed without signing his petition—changed the landscape of Indiana law and warranted relief from those orders. On December 2, the post-conviction court denied these motions, writing that "the lapse of twenty years from June 9, 2005" was "an extremely unreasonable period of time. That finding alone is sufficient to deny the motion. In addition, however, Petitioner has presented no new evidence, no extraordinary circumstances, no change in law, nor any meritorious claim to support his motion."

The State Public Defender appealed these orders on December 5, and on December 6, moved a second time to stay the December 18 execution while this Court decides the appeal. The State opposed the motion to stay. The Notice of Completion of Clerk's Record was served December 9, making the Appellant's Brief due January 8, 2025. App. R. 45(B)(1).

When an appeal is from a negative judgment, like this one, the appellant "must convince the appeals court that the evidence as a whole was such that it leads unerringly and unmistakably to a decision opposite that reached by the trial court." *Roche v. State*, 690 N.E.2d 1115, 1120 (Ind. 1997). This Court reviews the denial of a Trial Rule 60(B)(8) motion for an abuse of discretion, which occurs when the court "misinterprets the law" or the decision "clearly contravenes the logic and effect of the facts and circumstances before" the court. *T.D. v. State*, 219 N.E.3d 719, 724 (Ind. 2023). And here, Rule 60(B)(8) requires a motion for relief to be filed "within a reasonable time." Determining whether a period is "reasonable" turns in part on the "potential prejudice to the party opposing the motion and the basis for the moving party's delay." *State v. Collier*, 61 N.E.3d 265, 268 (Ind. 2016).

A court considering a stay must "apply a strong equitable presumption against granting relief where the claim could have been brought at such a time as to allow consideration of the merits without requiring a stay." *Nelson v. Campbell*, 541 U.S. 637, 650 (2004). Counsel has not shown any emergency that would warrant a stay of execution after we denied the earlier motions to stay. Six weeks after this Court set an execution date, counsel sought relief under Rule 60(B)(8) from nineteen- and twenty-one-year-old judgments that were previously litigated to this Court in *Corcoran v. State*, 820 N.E.2d 655, 656 (Ind. 2005), *aff'd on reh'g*, 827 N.E.2d 542 (Ind. 2005), and *Corcoran v. State*, 845 N.E.2d 1019, 1020 (Ind. 2006). They did not move to expedite the proceedings in the post-conviction court and have not moved to expedite the proceedings on appeal. Even if Corcoran were entitled to relief under *Isom*, this claim could have been raised after we issued *Isom* in June 2021, or after the State requested an execution date in June 2024. And, as the State observes, *Isom* may be distinguishable—there, Isom refused to sign his post-conviction petition because he had lost faith in his court-appointed attorneys, not because, like Corcoran, he decided he no longer wanted to pursue relief in the appellate courts.

While the merits of this appeal are not yet before us, the State Public Defender has not shown an abuse of discretion that would warrant granting the extraordinary relief requested. And the State Public Defender has failed to make the required extraordinary showing that the underlying appeals seeking equitable relief from decades-old judgments are likely to succeed.

Consistent with *Nelson*, we apply a strong presumption against granting relief when counsel could have brought this claim earlier. And our deferential standard of review of the denial of a Rule 60(B) motion creates another high bar for preliminary equitable relief that the State Public Defender has not met. For these reasons, we find no grounds to warrant a stay of the Court's September 11, 2024 order.

Being duly advised, the Court DENIES Corcoran's "Motion for Stay of Execution" based on the post-conviction court's denial of his motion for relief under Trial Rule 60(B).

Done at Indianapolis, Indiana, on 12/12/2024.

FOR THE COURT

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Molter, JJ., concur.
Rush, C.J., concurs in the judgment with separate opinion.
Goff, J., dissents with separate opinion.

Rush, C.J., concurring in the judgment.

I remain convinced that this Court should, at a minimum, have stayed the execution to appoint a psychiatrist to conduct a psychiatric examination to render an opinion on Corcoran's current mental state. *See Corcoran v. State*, --- N.E.3d --- (Ind. Dec. 10, 2024) (Goff, J., dissenting). But the issues the State Public Defender has raised in this second motion to stay are fundamentally different. And under our standard of review from a post-conviction court's decision, I see no legal basis for granting a stay based on the court's decision that the Trial Rule 60(B)(8) motions were not filed within a reasonable time. I therefore concur.

Goff, J., dissenting.

The State Public Defender is right. *Isom* instructs there are instances when it's appropriate to excuse a petitioner's failure to sign a petition for post-conviction relief. In *Isom*, it was his loss of faith in his counsel. Here, it's attributable either to his paranoid schizophrenia, which the State Public Defender asserts has prevented Corcoran from assisting counsel throughout the entirety of these proceedings, or to his desire to die. I view both possibilities as at least as compelling as the reason put forward by *Isom*.

There is also new evidence in the form of affidavits from Corcoran's trial counsel opining that the trial team failed obtain an accurate diagnosis of Corcoran's competency until before the sentencing hearing but **after** the jury had reached its verdict. These affidavits, attesting to ineffective assistance of trial counsel, are sufficient to establish a meritorious claim under Trial Rule 60(B), which merely requires a "prima facie showing" that new evidence, if credited, would lead to a different result if the case were tried on the merits. *Outback Steakhouse of Fla., Inc. v. Markley*, 856 N.E.2d 65, 73 (Ind. 2006). But this evidence was never considered by the trial court. Nor was it considered by this Court before we issued an order setting Corcoran's execution date, definitively condemning him to die. In short, evidence of Corcoran's severe mental illness has **never** been considered on the merits—a result improperly premised on the idea that a mentally incompetent person's unsigned petition for post-conviction relief amounts to procedural default. And this new evidence goes to the heart of the question before the Court: are we allowing an incompetent man to be put to death in violation of the Eighth and Fourteenth Amendments? A majority of states would not allow this to happen.[1]

At first blush, it would appear this request is untimely, but given that *Isom* was just decided in 2021, and this case was only reactivated on our docket earlier

[1] Twenty-three states have abolished the death penalty outright; five states have suspended the death penalty by executive action; and two states—Kentucky and Ohio—prohibit the death penalty for defendants diagnosed with severe mental illness. Death Penalty Information Center, State by State, https://deathpenaltyinfo.org/states-landing; Ky. Rev. Stat. Ann. § 532.140; Ohio Rev. Code Ann. § 2953.21(A)(1)(a)(iv).

this year, the question of timeliness becomes significantly less clear. And given that the issue before us presents a literal question of life and death, I would not dismiss this claim as untimely. Finally, even though this issue requires us to employ a deferential standard of review, and despite the fact that this trial judge is both well-respected and highly experienced, this issue should have been decided on the merits. It was not. Therefore, I dissent.